

Exhibit 1

2007 COMAD



Universal Service Administrative Company

Schools and Libraries Division

September 25, 2007

Mr. Jack S. Johnston
120 N. Stanton
El Paso, TX 79901

RE: Further Explanation of Commitment Adjustment Letters and Recovery of
Improperly Disbursed Funds Letter to El Paso Independent School District and
IBM Corporation
Funding Year 2001 FCC Form 471 # 256606

Dear Mr. Johnston:

Under separate cover, you are being sent Commitment Adjustment and Recovery of Improperly Disbursed Funds Letters (Notification Letters) concerning the FCC Form 471 Application Number cited above. **Please be advised that the Notification Letters are the official action on this application by the Universal Service Administrative Company (USAC). Please refer to those letters for instructions regarding how to appeal the Administrator's decision, if you wish to do so.** The purpose of this letter is to provide you with additional information concerning the reasons for USAC's Commitment Adjustments and Recovery of Improperly Disbursed Funds decisions.

Factual Background

In Funding Year 2001, El Paso Independent School District (El Paso ISD) submitted FCC Form 471 # 256606 to the Schools and Libraries Division (SLD) of USAC seeking funding for eight internal connections Funding Request Numbers (FRNs) and one Internet access FRN. IBM Corporation (IBM) is the service provider associated with each of these FRNs. USAC funded these requests and eventually disbursed \$55.3 million to IBM related to these FRNs.

USAC later learned that the FRNs may not have been in compliance with Federal Communications Commission (FCC or Commission) rules governing the Schools and Libraries program. On September 16, 2004, USAC notified IBM of its initial eligibility determinations for each FRN based on documentation that had been provided to USAC after USAC made its original funding decision, and requested that IBM respond to USAC's eligibility determinations.¹ USAC later contacted El Paso ISD for information related to certain FRNs for which El Paso ISD could provide relevant information. Since

¹ See Letter from George McDonald, Vice President, Schools and Libraries Division, USAC, to Bob Richter, National ERate Program Executive, IBM Corporation, September 16, 2004 (*September 2004 Letter*).

that time, IBM and El Paso ISD have responded to USAC's preliminary eligibility determinations and questions. On June 19, 2006, USAC provided El Paso ISD and IBM with its eligibility determinations and provided a final opportunity for El Paso and IBM to submit additional information to enable USAC to make its final recovery determinations.² IBM and El Paso ISD each responded to USAC's June 2006 Letter. USAC has carefully considered the responses from IBM and El Paso ISD as explained in detail below, and has determined that ineligible products and services were provided for certain FRNs, that funds were improperly disbursed for one FRN, and that recovery should be sought from IBM and El Paso ISD as explained below.

Regulatory Background

In preparing request(s) for funding, applicants seeking discounted services through the Schools and Libraries program must follow certain competitive bidding requirements. An applicant initiates the competitive bidding process when an applicant submits an FCC Form 470 to USAC for posting on the USAC website.³ This posting enables prospective service providers to bid on the equipment and services for which the applicant will request universal service support. After the FCC Form 470 has been posted, the applicant must wait at least 28 days before entering into agreements with service providers, must comply with all applicable state and local procurement laws, and must comply with the other competitive bidding requirements established by the FCC.⁴ Upon selecting the service provider(s), applicants submit FCC Form 471 on an annual basis specifying, among other things, the services to be provided and the cost.⁵

Schools and Libraries program rules authorize USAC to provide universal service support to telecommunications carriers and non-telecommunications carriers for providing supported services to eligible entities.⁶ Each funding year, the Commission approves an Eligible Services List (ESL), which provides details about eligible equipment and services, and the conditions under which they are eligible.⁷ USAC makes funding decisions consistent with the guidance in the ESL for each funding year. With the exception of ancillary ineligible components, where products and services contain eligible and ineligible components, "costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-

² See Letter from Mel Blackwell, Vice President, Schools and Libraries Division, USAC to Bob Richter and Tony Wening, National ERate Program Executive, IBM Corporation, Terri Jordan, Executive Director, Business Services, Technology and Information Systems, El Paso Independent School District, June 19, 2006 (*June 2006 Letter*).

³ See 47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (FCC Form 470).

⁴ See 47 C.F.R. §§ 54.504, 54.511; In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, ¶ 575 (rel. May 8, 1997) (*Universal Service Order*).

⁵ See 47 C.F.R. §§ 54.504(c), 54.507(d) (2000); Schools and Libraries Universal Service, Services Ordered and Certification Form 471, OMB 3060-0806, Item 25 (October 2000)(FCC Form 471).

⁶ See 47 C.F.R. §§ 54.501(a), 54.502, 54.503, 54.517, 54.518, 54.519, 54.522.

⁷ See 47 C.F.R. 54.522.

effective means of receiving the eligible service.”⁸ The cost allocation must be based on tangible criteria that provides a realistic result.⁹ When USAC is not provided with the information necessary to separate the eligible and ineligible portions, USAC generally rescinds the entire commitment for that FRN and seeks recovery of the full amount disbursed.¹⁰

The Commission requires USAC to rescind funding commitments and seek recovery of funds disbursed when USAC determines that it committed funds in error because the commitment constitutes a violation of the Communications Act of 1934, as amended;¹¹ or a violation of Commission rules.¹² USAC also seeks Recovery of Improperly Disbursed funds when funds were disbursed in violation of the statute or Commission rules, but the original commitment was consistent with the statute or Commission rules. When USAC determines that both eligible and ineligible products and services have been provided, USAC adjusts the funding commitment and seeks recovery of the ineligible portion only. Applicants and service providers, who disagree with any of USAC’s commitment adjustment and/or recovery decisions, can appeal those decisions to USAC and/or the Commission.¹³

Overview of USAC’s Determinations

USAC has reviewed the documentation provided by IBM and/or El Paso ISD and has determined that no commitment adjustments or recoveries will be sought at this time for FRNs 648909, 648594, 648857, or 648996 based on the information provided. For the remaining FRNs, USAC seeks recovery of a total of \$19,448,146.54 from IBM and/or El Paso ISD. For FRN 648758, USAC will seek recovery of \$1,279,631.59 from IBM disbursed for ineligible items base on information provided by IBM. For FRNS 648646, 648729, 648793, and 648960, in the paragraphs below, USAC explains the basis for its

⁸ 47 C.F.R. § 54.504(g). This rule codified existing guidelines for allocating costs between eligible and ineligible services. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, ¶ 31 (2003) (*Schools and Libraries Third Order*).

⁹ <http://www.universalservice.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx>.

¹⁰ See *Schools and Libraries Third Order*, 18 FCC Rcd 26912, ¶ 32 (2003).

¹¹ 47 U.S.C. § 254.

¹² See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, Order, FCC 99-291 (1999) (*Commitment Adjustment Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, Order, 15 FCC Rcd 7197 (1999) (*Commitment Adjustment Waiver Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, Order, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) (*Schools and Libraries Fourth Order*); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (*Schools and Libraries Fifth Order*).

¹³ See 47 C.F.R. §§ 54.719-54.725.

eligibility and recovery determinations. USAC has carefully considered IBM and El Paso ISD's responses, and has determined that commitments need to be adjusted and recovery sought as set forth in the table below.

FRN	DESCRIPTION	COMMITMENT	DISBURSEMENT	RECOVERY AMOUNT	PARTY
648729	Video	\$3,902,493.60	\$3,324,008.12	\$742,075.13	IBM
648758	Web access	\$2,457,027.90	\$2,457,027.87	\$1,279,631.59	IBM
648960	File Servers	\$5,850,540.00	\$3,374,300.00	\$843,575.00	IBM and El Paso ISD
648646	E-mail	\$3,229,025.65	\$3,229,025.65	\$180,792.47	IBM
648793	Maintenance	\$24,409,530.00	\$24,409,530.00	\$16,402,072.35	IBM
	Total			\$19,448,146.54	

E-MAIL FUNDING REQUEST - FRN 648646

USAC committed \$3,229,025.65 for this FRN and disbursed the full amount to IBM. USAC identified 17 descriptions, out of approximately 44, in the relevant Statement of Work that appeared to indicate ineligible components. IBM responded that products and services for Design and Engineering, Training, and Provide Documentation are eligible for funding.¹⁴ Additionally, IBM provided a list of services for which it was unsure whether the items were eligible for funding.

IBM also submitted an unexecuted Change Authorization to support its position that ineligible services which were initially included in the Statement of Work were never performed.¹⁵ IBM stated that this Change Authorization eliminated the ineligible items, and that "SLD was not invoiced for these tasks."¹⁶ However, USAC reviewed invoicing documentation submitted by IBM and/or El Paso ISD to USAC for this FRN and has determined that USAC was invoiced and disbursed funds for ineligible items that were included on the Statement of Work, but purportedly eliminated by the Change Authorization. That is, services which were eliminated by the Change Authorization were in fact delivered and funds were disbursed. USAC provided copies of the records supporting this conclusion to IBM and El Paso ISD. Because the Change Authorization was unexecuted, and because the documentation in USAC's files conflicted with the Change Authorization, USAC initially rejected the Change Authorization as a basis for determining which products and services were provided for this FRN.

¹⁴ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to George McDonald, Vice President, Schools and Libraries Division, USAC, March 25, 2005.

¹⁵ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Phil Gieseler, Eligible Services Manager, Schools and Libraries Division, USAC, August 17, 2005.

¹⁶ *Id.*

The Statement of Work for the E-mail FRN provided a description of 47 separate tasks. USAC assigned a number to each of these, and will refer to that number in the discussion below. As stated above, USAC's analysis determined that 17 of these descriptions raised eligibility questions. After considering the information submitted, USAC classifies these services as follows:

1. With respect to Items 1-3, IBM argues that certain activities are not ineligible planning, but rather are eligible design and engineering costs. USAC rejects the majority of these arguments and has conducted a cost allocation based on the information available.
2. With respect to Items 4-6, IBM has provided information that USAC accepts as a resolution.
3. With respect to Items 6-17, IBM has now submitted signed Change Authorizations indicating that the questionable services were not performed, but instead other activities were conducted. Except as discussed below, USAC does not question the eligibility of the added activities and accepts the signed Change Authorizations as a resolution.
4. With respect to Item 12, this task includes ineligible firewall software, as well as components that appear to be eligible. IBM did not provide a cost allocation for this ineligible software, but USAC has conducted a cost allocation based on the information available.
5. With respect to Item 17, in response to USAC's request that IBM provide cost allocation information, IBM – reserving its right to appeal the underlying eligibility question – submitted a cost allocation for this task.¹⁷

Eligibility Determinations and Cost Allocation Analysis

IBM identifies the hardware and software costs as totaling \$492,270.20 and the labor costs as totaling \$3,095,536.08 for this FRN. This cost allocation is based on the labor costs distributed across 47 individual tasks. IBM has weighted each of the 47 tasks equally: “[s]ince the level of detail on individual tasks is limited, we have opted to use a ‘per description (task)’ cost allocation of the type frequently used by USAC in PIA initial reviews.”¹⁸ Dividing the labor cost by 47 individual tasks provides a cost per task of \$65,862.47 attributable to each task, which at a 90% applicant discount is equivalent to \$59,276.22 post-discount.

¹⁷ IBM indicates that the task originally indicated in the Statement of Work was eliminated, but also indicates that a similar task was added and performed. To aid discussion and due to these similarities, this analysis does not distinguish between the subtracted and added tasks in this instance.

¹⁸ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, re: E-mail FRN at 4, August 16, 2006.

USAC accepts the cost allocation methodology employed by IBM in this case. USAC's June 19, 2006 letter stated "[u]nder the circumstances present here, if we receive information that each of the approximately 44 components to the funding request involved about the same level of effort, then the funding request could be cost allocated so that recovery would be sought for 15/44 of the funds disbursed." IBM has not provided information establishing that each component involved about the same level of effort. However, USAC understands IBM's use of this methodology to be an implicit statement to this effect. USAC's acceptance of IBM's approach is limited to the circumstances in this FRN. USAC sees no information in the record that would contradict the assumptions underlying a cost allocation approach based on equal weighting of the tasks indicated in the Statement of Work.

Items 1-3

Items 1-3 of the Statement of Work are: "Develop distributed email architecture"; "Specify email server sizing & configuration"; and "perform planning and assessment for email deployment." IBM posits that these are eligible "design and engineering" services. The ESL applicable to this time period has no entry for "design and engineering."¹⁹ Instead, the relevant entries indicate that on-site technical support is conditionally eligible, but that consulting services are not eligible.²⁰ Eligible technical support generally involves the services directly necessary for a technology to be put into place. The services are closely tied to actual installation and configuration. Ineligible consulting services are associated with the pre-planning activities that involve fundamental decisions about the technology to be employed, such as the network architecture to be used and the specific products to be deployed. Clearly "architecture" of a technology deployment as well as "sizing & configuration" of the equipment must be defined prior to the applicant's submission of their FCC Form 471. An applicant would not be able to make a responsible selection in response to the bids submitted, or provide reliable information required on the FCC Form 471, without such detail. Even if planning activities take place after submission of the FCC Form 471, those activities that involve a determination of the technology to be deployed rather than installation and configuration of technology are ineligible consulting services. Planning services that are a part of the normal Schools and Libraries program competitive bidding process are not eligible for funding, as are similar activities that occur within the relevant funding year.

Therefore, USAC has determined activities in the Statement of Work that involve installation and configuration services are eligible for funding, but activities in the Statement of Work that involve a determination of the technology to be deployed are not

¹⁹ Later Eligible Services Lists included this term, and indicated that such services could be eligible if they were provided at the same time as installation. Such services are distinguishable from consulting services as described in the body of this document.

²⁰ See Schools and Libraries, Eligible Services List at 22, 31 (January 24, 2001) available at <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>.

eligible. Determining the technology to be employed is appropriately characterized as consulting activities, which are ineligible under the applicable ESL.²¹

With this background, each of the three task descriptions at issue are evaluated as follows:

- “Specify email server sizing and configuration” was provided as part of IBM’s Statement of Work to the applicant. The Item 21 Attachment to the FCC Form 471 indicated the specific equipment to be provided. Consequently, the work of specifying the e-mail server sizing and configuration was done prior to the submission of El Paso ISD’s FCC Form 471 for Funding Year 2001 and prior to the start of Funding Year 2001 and therefore is not eligible for funding.
- Similarly, “Develop distributed email architecture” is a necessary component of the procurement activity. Applicants are required to evaluate competing bids,²² and in exercising this responsibility must understand the services to be provided from bidders. Because the activity involves “development” of architecture, rather than implementation, it also falls within an ineligible planning activity that occurred prior to the submission of El Paso ISD’s FCC Form 471 for Funding Year 2001 and prior to the start of Funding Year 2001 and therefore is not eligible for funding.
- Finally, evaluating the task to “perform planning and assessment for email deployment,” the terminology employed—“planning” and “assessment”—raises eligibility questions similar to those indicated above. However, IBM indicates that these activities included migration of old e-mail accounts to the new system, which would be an eligible activity. USAC concludes that the “planning and assessment for email deployment” includes eligible items.

Considering all three of the above activities, and conceding that the last activity could contain some eligible services, USAC concludes that a total of two line items above are not eligible because they provide ineligible consulting services rather than eligible configuration and installation services.

This conclusion has been reached based on the information available. IBM and El Paso ISD have asserted that the activities were eligible, but these assertions are at odds with the guidelines set forth in the Funding Year 2001 Eligible Services List.²³ Furthermore, IBM did not substantiate its position by providing records of the actual services performed even though there has been ample opportunity for such records to be provided. Therefore, USAC has determined that \$118,552.44 (\$59,276.22 * 2 =

²¹ See Schools and Libraries, Eligible Services List at 31, 37 (January 24, 2001) available at <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>.

²² See 47 C.F.R. §§ 54.504(a), 54.511(a) (2000).

²³ See Schools and Libraries, Eligible Services List at 31, 37 (January 24, 2001) available at <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>.

\$118,552.44) must be recovered for the line items that include ineligible consulting services.

Item 12

Item 12 of the Statement of Work is: "Install & configure IBM I servers. (2) with free firewall software." Firewall software was not eligible for funding in Funding Year 2001, yet IBM failed to provide a response to USAC's conclusion that the provision, installation, and configuration of firewall software as indicated in the Statement of Work was not eligible.²⁴ Since IBM did not provide a cost allocation, USAC is calculating a cost allocation based on the information available.

The detailed specification of the products to be provided indicates that the line item involves four file servers. Consequently, two of the file servers indicated in this line item received the ineligible products. USAC recognizes that the cost attributable to the ineligible firewall products and related installation and configuration services may be only a part of the overall installation and configuration of the servers. In the absence of cost allocation information submitted by IBM, USAC estimates these costs as 10% of the full installation and configuration tasks for the 50 percent of these servers that received the ineligible software. Thus, USAC's determination of the proportion of cost attributable to the ineligible software (including its installation and configuration) is \$3,293.12. ($\$59,276.22 * 10\% * 50\% = \$2,963.81$).

Item 17

Item 17 of the Statement of Work is "We will provide and install three Domino applications as pilots..." USAC has been informed that IBM bid Lotus Notes for the e-mail project but according to the information submitted, EPISD decided it did not meet their needs. Subsequently, the Domino servers were used with three e-mail programs to evaluate which e-mail solution was best for EPISD. IBM argues that "[t]he IBM service delivery team believed this to be an eligible activity because IBM was assisting EPISD in what amounted to a service substitution."²⁵ USAC rejects this eligibility argument and finds that the activities described clearly fall within ineligible consulting that has never been eligible for funding.²⁶ The \$65,862.47 pre-discount figure submitted by IBM will

²⁴ IBM states that Change Authorization #9 eliminated this task. However, while the Change Authorization removed sections 2.5 and 2.6 from the Statement of Work, the free firewall software was indicated in section 2.3.

²⁵ *Id.*

²⁶ IBM's August 16, 2006 letter describes the work conducted as follows:

As work was commencing, EPISD changed its mind about Lotus Notes and decided it did not meet its needs. EPISD also did not have a specific replacement email package in mind. EPISD asked IBM to assist with selection of a substitute email package, which the service delivery team did, believing such activity to be eligible under E-Rate.

The work done to assist EPISD with this email substitution was to load Domino, as the operating system, and then load the substitution candidates on the server for EPISD to test and evaluate....

be accepted as the appropriate amount for cost allocation of this activity and each of the 47 individual tasks in the Statement of Work. At the 90% discount level, this figure is equivalent to \$59,276.22.

Total Recovery Amount for FRN 648646: Totaling the cost of all ineligible items, the amount committed for ineligible items for this FRN is \$181,121.78 (\$59,276.22 + \$118,552.44 + \$2,963.81 = \$180,792.47). USAC has adjusted the funding commitment for this FRN and will seek recovery of this amount from IBM via the Commitment Adjustment (COMAD) Letter process.

Video Funding Request -- FRN 648729

USAC committed \$3,902,493.60 for this FRN and disbursed \$3,324,008.12 to IBM. USAC raised two questions related to this FRN: (1) Why the associated costs such as equipment component and labor costs did not decrease when the number of sites originally funded – 90 – was decreased to 53, and (2) Whether ineligible products and services were provided.²⁷ With respect to the number of sites funded, IBM responded that the cost of the equipment was decreased by \$641,762, but that the associated costs for installation and configuration services did not decrease.²⁸ With respect to whether ineligible services were provided, USAC has reviewed IBM's responses and has determined that it appears no ineligible services were actually provided.

However, with respect to the amount disbursed for both products and services provided to the reduced number of sites, USAC finds that there should have been a corresponding decrease in associated costs when the number of sites decreased from 90 to 53, even though IBM has indicated that there was no decrease for the services performed. In response to USAC's request that IBM provide cost allocation information, IBM – reserving its right to appeal the underlying substantive question – submitted a cost allocation indicating an excess disbursement of \$68,359.00.²⁹

In addition, IBM authored a document comparing the three email substitution candidates' pros and cons and provided it as a deliverable and assisted on an as needed basis with the evaluation. Parts of this activity stretched across several weeks....

This description clearly indicates a substantial consulting activity involved with assisting the applicant with a determination of the technology to be deployed. Such a consulting activity is not eligible for E-rate funds.

²⁷ See September 16, 2004 Letter at 2; Eligibility Analysis (attachment to letter) at 4-5.

²⁸ See Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Phil Gieseler, Eligible Service Manager, Schools and Libraries Division, USAC, August 17, 2005.

²⁹ See Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, Re: Video FRN, August 16, 2006.

Cost Allocation Analysis

USAC concludes that a greater reduction than proposed by IBM is appropriate based on the circumstances of this case. IBM indicates that a reduction in sites does not necessarily call for the same proportionate reduction in the costs of services provided—i.e., some services are required regardless of the number of sites. USAC can accept this general proposition, but, as shown in the table below, finds the specific implementation of this concept by IBM in some cases is not a realistic portrayal of costs that would be unaffected by a decrease in scope.

IBM provided a list of 14 installation and configuration tasks, and assigned percentage figures that represent the level of effort involved for each. IBM indicates that five of the tasks were “infrastructure-related,” and “essentially did not vary based on the number of video sites.” IBM indicates that these five tasks account for 50% of the level of effort. These five tasks, and USAC’s analysis of IBM’s position, are as follows:

Tasks that IBM indicates would not change in scope with a decrease in the number of sites	
FRN Task	USAC Response
1. “All units shipped at the same time from SUBCONTRACTOR will also be tested as a system, if proper documentation has been provided to SUBCONTRACTOR from the customer.” (10%)	Testing of a smaller number of components is smaller in scope than testing of a larger number of components.
2. “Test the product with its connected peripherals as part of the system (System Level Acceptance Test and Product Level Field Acceptance Test) as installations occur. If the IBM customer provided network, IBM customer provided peripherals or IBM customer provided wiring prevents the system from passing, the testing will be completed without the IBM customer provided components.” (20%)	Testing of a smaller number of components is smaller in scope than testing of a larger number of components.
3. “Inform the IBM Project Manager that the IBM customer’s network is suspected to be the reason for the system not passing. SUBCONTRACTOR will make the	USAC agrees that this task could involve the same level of effort even with the reduction in scope from 90 sites to 53 sites.

IBM Project Manager aware of this fact as soon as it is aware of the issue so that the problems may be resolved. If network issues remain unresolved at the end of the installation schedule, SUBCONTRACTOR will provide product level testing information to the IBM Project Manager at the system sign-off meeting." (5%)	
4. "Provide system level testing (System Level Acceptance Test) information to the IBM Project Manager." (5%)	Development of information regarding configurations at 53 sites is smaller in scope than such services involved with 90 sites.
5. "Provide the customer with a basic system orientation." (10%)	USAC agrees that this task could involve the same level of effort even with the reduction in scope from 90 sites to 53 sites.

USAC therefore rejects the contention that the costs attributable to three of the tasks would be unchanged with a significant decrease in scope, but accepts IBM's explanation in two cases. According to IBM's information, these two tasks contribute 15% of the original project cost. Therefore, USAC accepts that 15% of the original project cost is attributable to tasks that would not vary with project scope. This leaves 85% of the project that would be affected by project scope. For the portion that would be affected by project scope, IBM uses a factor of 41%, attributable to the number of reduced sites ($90 - 53 = 37$) divided by the original number of sites (90). USAC agrees that this is an appropriate factor for cost allocation.

In addition, IBM indicates that an additional 10% should be recognized as overall project management and design and engineering that "would not have been reduced by a reduction in the number of sites." However, it is mathematically improper to apportion 100% of activities to fourteen tasks, as IBM has done, and then to claim an additional 10% on top of this. Therefore, USAC rejects this factor.

Thus USAC's determination of the labor costs that would remain static regardless of decreased project scope is 15%. The remaining 85% of labor costs can be considered to move proportionately with the scope of the project. The overall project can be divided into three components: (1) Hardware costs; (2) Services for costs not affected by the decreased scope; and (3) Services for costs that are affected by the decreased scope.

IBM has indicated that the hardware cost of the project was originally estimated at \$1,903,053, and this cost was reduced by \$641,762 due to the decreased scope, for a revised hardware total of \$1,261,291 pre-discount, or \$1,135,161.90 post-discount. This reduction of $\$641,762 / \$1,903,053 = 34\%$ tracks roughly with the reduction in project scope of 41% and is accepted by USAC, considering IBM's contention that some centralized hardware would not be eliminated due to the decreased scope.

IBM also indicates that the labor part of the contract was \$2,471,001, which corresponds to a figure of \$2,223,900.90 post-discount at the 90% discount level. Based on USAC's analysis as described above, 15% of this amount can be considered as a fixed cost regardless of the decrease in scope, and the remaining 85% can be considered to move proportionately with the decreased scope. Therefore, the amount attributable to the fixed cost of labor is $\$2,223,900.90 * 15\% = \$333,585.14$.

The proportion of labor costs that are found to vary with the decrease in scope is $\$2,223,900.90 * 85\% = \$1,890,315.76$. With a decrease in project scope from 90 to 53 sites, the costs appropriate for this part of the project are $53/90 * \$1,890,315.76 = \$1,113,185.95$.

Adding these three separate cost components provides a total post-discount cost of $(\$1,135,161.90 + \$333,585.14 + \$1,113,185.95) = \$2,581,932.99$. No more than this dollar amount should have been disbursed by USAC. However, USAC was invoiced and disbursed \$3,324,008.12. Thus $\$3,324,008.12 - \$2,581,932.99 = \$742,075.13$ is the amount of excessive USAC disbursement.

Total Recovery Amount for FRN 648729: USAC will therefore seek recovery of \$742,075.13 from IBM via the Recovery of Improperly Disbursed Funds (RIDF) Letter process.

Web and File Server Funding Request -- FRN 648960

USAC funded \$5,850,540 for this FRN and disbursed \$3,374,300 to IBM. USAC requested information about the specific uses of the servers from El Paso ISD in order to determine whether the servers are being used only for eligible purposes. El Paso ISD initially responded that the file servers are used for "web-based access to email and to a file server."³⁰ This response did not provide the information USAC needs to determine whether the file servers are being used only for eligible purposes, and so USAC provided El Paso ISD with an additional opportunity to respond.

El Paso ISD states that two servers each were installed at 52 sites, for a total of 104 servers.³¹ El Paso ISD further states that although \$5,850,540 was funded for this FRN, they acquired fewer servers than were funded.³² One server at each site was configured as an e-mail server, which the Funding Year 2001 Eligible Services List³³

³⁰ Letter from Terri Jordan, Executive Director, Technology and Information Systems, El Paso ISD, to Philip Gieseler, Schools and Libraries Division, USAC, August 19, 2005 at 3.

³¹ Letter from Louis Mona, Interim Executive Director, Technology and Information Systems, El Paso ISD, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, August 19, 2006 at 3 (*El Paso 2006 Letter*).

³² *El Paso 2006 Letter* at 2.

³³ See Schools and Libraries, Eligible Services List at 27 (January 24, 2001) available at <<http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>>.

indicates is eligible for funding. The other server at each site was configured for two purposes – as an authentication server and for “supplementary student file storage.”

USAC concludes the authentication server is eligible for funding in this case. An authentication server provides a login function for network users, by confirming that a user name and password is valid. The Funding Year 2001 Eligible Services List did not specifically indicate that an authentication server is eligible for funding, but USAC concludes that the description provided by the applicant fits is consistent with general eligibility requirements for internal connections.³⁴ As configured, the authentication servers were “an essential element in the transmission of information,” since users must login to the network for transmission to take place.³⁵ However, USAC concludes that the storage of non-e-mail end user files was not eligible under the Funding Year 2001 Eligible Services List.³⁶

Cost Allocation Analysis

Recognizing that eligibility of the student file storage is “subject to dispute,” El Paso ISD submitted a proposed cost allocation based on subtracting the cost of some of the hard disk drives included with the authentication file servers.³⁷ USAC has evaluated the cost allocation and has concluded that it does not meet the necessary standard of being based on “tangible information that provides a realistic result” for the following reasons:

- The file servers consist of many components beyond the hard drives, such as memory modules, central processing unit, case, and cooling fans. All components of the file servers are being used in part for ineligible capability—not just the hard drives.
- Subtraction of hardware cost only is not appropriate because a substantial amount of the FRN cost was for installation and configuration of the file servers.
- As an ancillary point, El Paso ISD claims that the hard drive costs are based on January 2002 information, yet it is not clear that the supporting information submitted represents costs during that time period. Actual costs at time of procurement would be higher than current costs.

Therefore USAC has utilized a cost allocation approach that is documented on the USAC website as applicable to file servers, as follows:

³⁴ See Schools and Libraries, Eligible Services List at 21, 26 available at <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>.

³⁵ *Universal Service Order*, 12 FCC Rcd at 9021.

³⁶ See Schools and Libraries, Eligible Services List at 26 (January 24, 2001) available at <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>.

³⁷ *El Paso 2006 Letter* at 3-4.

Half of the 104 file servers are being used in two ways, one of which is considered eligible and one of which is clearly not eligible. For these partially eligible servers, an acceptable cost allocation is to simply consider the number of eligible uses in comparison to the total number of uses, that is (one eligible use) divided by (two total uses) equals fifty percent eligibility. The full cost allocation for the entire funding request is therefore as follows:

Half of the 104 file servers are fully eligible.
Half of the 104 file servers are 50% eligible.
Therefore, the entire funding request is 75% eligible.
The remaining 25% of the funding request is not eligible.

The amount disbursed by USAC for the 104 file servers, including their installation and configuration was \$3,374,300.00. Since under the cost allocation, 25% of this amount is not eligible, the amount to recover is: $\$3,374,300.00 * 25\% = \$843,575.00$.

Total Recovery Amount for FRN 648960: USAC funded and disbursed \$843,575.00 for ineligible items. USAC has adjusted the funding commitment and will seek recovery of this amount from both El Paso ISD and IBM because they each share responsibility for the ineligible use. Specifically, El Paso ISD used a portion of the servers for an ineligible use, and IBM was responsible for configuring the servers to allow for the ineligible use.

Maintenance Services Funding Request -- FRN 648793

USAC funded \$24,409,530 for this FRN and disbursed the full amount funded to IBM. USAC questioned whether the FRN included substantial ineligible items.³⁸ IBM disagrees that this FRN includes any ineligible items and argues that at the time this FRN was funded, the goods and services were eligible for funding in their entirety.³⁹

At the United States House Committee on Energy and Commerce, Oversight and Investigations Subcommittee hearing held on September 22, 2004 entitled "Problems with the E-rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of our Nation's Schools to the Internet," IBM testified that services outside of eligible basic maintenance were provided as a part of this funding request.⁴⁰ IBM further testified that services were provided for only two and one half months before the end of the last day to receive service for this FRN.⁴¹

³⁸ See September 16, 2004 Letter at 2; Eligibility Analysis (attached) at 5-6.

³⁹ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to George McDonald, Vice President, Schools and Libraries Division, USAC, March 25, 2005.

⁴⁰ Problems with the E-rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of our Nation's Schools to the Internet Part 3: Hearing before the Subcomm. On Oversight and Investigations of the House Comm. On Energy and Commerce, 108th Cong., pp. 260-262 (2004) (*Hearing Record*).

⁴¹ *Hearing Record*, p. 261.

In the Universal Service Order, the Commission held that support can be provided for “basic maintenance services” that are “necessary to the operation of the internal connections network.”⁴² In the *Ysleta Order*, which was released subsequent to the FRNs at issue here, the Commission directed USAC to ensure that it complied with this holding when it reviewed subsequent funding requests:

When SLD reviews the applications that are submitted after the rebidding occurs, it should ensure that discounts are provided only for “basic maintenance” and not for technical support that falls outside the scope of that deemed eligible in the Universal Service Order.” (emphasis added).⁴³

The Commission clarified in the *Schools and Libraries Third Order* that helpdesks that provide a comprehensive level of support beyond basic maintenance of only eligible components are ineligible for funding.⁴⁴ While the *Ysleta Order* and the *Schools and Libraries Third Order* were released by the FCC subsequent to the funding requests at issue here, in these orders the Commission clarified and reaffirmed the essential holding in the original *Universal Service Order*.

USAC has determined, consistent with the *Universal Service Order*, that this FRN included substantial ineligible items. The details related to this FRN indicate that in order to provide the services, IBM created an extensive facility for maintenance support. For example, information submitted to the House Oversight Committee indicates that up to \$16 million of the funding request was used for developing the infrastructure and tools as opposed to the delivery of actual, eligible support services.⁴⁵ The ineligible items are those which were used to create the facility and which are not eligible in themselves. While basic maintenance services of eligible components are eligible, the creation of an extensive support structure for the delivery of those services is not eligible. Services well beyond a basic level were provided, as evidenced of cost per site in excess of half a million dollars. USAC has provided ample opportunity for IBM and El Paso ISD to submit specific information in support of their position that only eligible services were provided. However, neither IBM nor El Paso ISD have provided documentation – such as records of the actual services provided – to support their arguments that only eligible services were provided. Additionally, although USAC disbursed the full amount

²⁰ *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8784-85, ¶ 460 (1997).

⁴³ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et al. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, Order, 19 FCC Rcd 6858 ¶ 64 (2003).

⁴⁴ *Schools and Libraries Third Order* ¶ 24.

⁴⁵ Hearing Record, pp. 260-262, 563-564.

committed for this FRN, IBM states that services were provided for only five and a half months.⁴⁶

Cost Allocation Analysis

In response to USAC's request that IBM provide cost allocation information, IBM – reserving its right to appeal the underlying substantive questions – submitted a cost allocation indicating that consistent with USAC's stated eligibility determinations, \$5,692,208.64 was disbursed by USAC for ineligible items.⁴⁷ USAC has evaluated the cost allocation and has concluded that it does not meet the necessary standard of being based on "tangible information that provides a realistic result" because as explained in greater detail below, some of the assumptions underlying the cost allocation are contrary to information available in this case.

The cost allocation submitted by IBM is based on separating the project into three equally-weighted parts of \$9,040,566.67 (pre-discount): actual repairs, initial setup, and overall project management, with a cost allocation for each of these three parts as follows:

Actual repairs: IBM considers the portion for actual repairs to be 100% eligible.
Initial setup: IBM has further divided this category into nine sections, and has assigned a level of eligibility to each of these nine, from 0% eligible to 100% eligible. IBM has calculated that the resulting ineligible cost from this section is \$4,269,156.49. ⁴⁸
Project management: IBM indicates that it has allocated overall project management "in the same proportion as the ineligible portion" of the initial setup costs. However, due to a mathematical error, IBM

⁴⁶ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, Re Maintenance FRN, August 17, 2006.

⁴⁷ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, August 17, 2006, Attachment #1.

⁴⁸ The breakdown indicated by IBM for initial setup of the overall project is as follows:

Task Description	Task Price	Eligible %	Ineligible \$
Network maintenance system design	\$1,004,507.41	25%	\$753,380.56
Detailed implementation design & test environment installation	\$1,004,507.41	0%	\$1,004,507.41
Deployment of network maintenance framework	\$1,004,507.41	25%	\$753,380.56
Deployment of Server and Network Monitoring Inventory	\$1,004,507.41	50%	\$502,253.70
Maintenance event consolidation and automation	\$1,004,507.41	100%	\$0
Help desk problem + change maintenance function	\$1,004,507.41	50%	\$502,253.70
User administration	\$1,004,507.41	25%	\$753,380.56
Remote control	\$1,004,507.41	100%	\$0

The amount shown by IBM as ineligible initial setup is 47% of all expenses categorized as initial setup.

incorrectly concludes that the resulting ineligible cost is \$1,423,052.16, whereas the actual ineligible cost for project management using their methodology would be \$2,134,578.24.⁴⁹

In total, once the mathematical error is corrected, the IBM methodology indicates that \$6,403,734.73 (pre-discount) would be cost allocated from the FRN. ($\$4,269,156.49 + \$2,134,578.24 = \$6,403,734.73$). On a post-discount basis, the recovery amount under this formulation would be $\$6,403,734.73 * 90\%$ discount rate = \$5,763,361.26, which is 23.6% of the disbursed amount of \$24,409,530.00.

Cost Allocation Analysis

In determining whether the IBM methodology is consistent with the standard of “tangible information that provides a realistic result,” USAC has considered whether the cost allocation framework proposed is acceptable. In particular, USAC has evaluated whether the approach of dividing the full project into three equally-weighted components is valid. USAC’s June 19, 2006 letter specifically indicated the acceptability of such an approach if each of the “components to the funding request involved about the same level of effort.” In other cases, USAC indicated that an appropriate approach would “include weighting for the level of effort utilized for each of the component parts.”

In this case, the information available indicates that an equal weighting of the categories identified by IBM is inconsistent with the actual proportion of eligible and ineligible services rendered for the following reasons. First, IBM concedes that actual repair services during the fifteen month period from July 1, 2001 through September 30, 2002 were performed for only the last 5 and a half months of this period of time. The date of USAC’s Funding Commitment Decision Letter was September 28, 2001, and so it is reasonable to expect that the funding commitment should be used for maintenance services over 12 months. If service was only provided for a lesser time period, then the full cost of the FRN should not have been disbursed. Therefore, the methodology used by IBM cannot be accepted because the proportion of time that actual maintenance services were not provided ($6.5 \text{ divided by } 12 = 54\%$), is much larger than the 23.6% figure that comes from IBM’s cost allocation methodology.

⁴⁹ IBM indicates that the project management category is allocated in the same proportion as “the ineligible portion...of the ‘Technical Support Office Initial Setup.’” The ineligible portion of the Technical Support Office Initial Setup is \$4,269,156.49, as shown in the previous footnote. However, IBM appears to have incorrectly included the one-third cost of the project management category (\$9,040,566.67) in the calculation of these very project management costs, which is mathematically incorrect. IBM’s calculation appears to be $\$4,269,156.49 \text{ divided by } (\$9,040,566.67 + \$9,040,566.67 + \$9,040,566.67)$ whereas a more accurate calculation would be $\$4,269,156.49 \text{ divided by } (\$9,040,566.67 + \$9,040,566.67)$. This latter calculation, which comes to 23.6%, is used to develop the corrected ineligible portion of project management expenses according to the IBM formulation of \$2,134,578.24. (The total project management portion of \$9,040,566.67 times the ineligible factor of 23.6% equals \$2,134,578.24.)

Second, the record before the House Committee indicates that approximately \$16 million of the funding request was used for “tools” as opposed to actual support services.⁵⁰ The information available indicates that a significant portion of the funding request was used to create the support facility, rather than implement actual repair services. Consequently, the information available does not support a cost allocation approach that is based on only a portion of one third of the funding request being attributed to the substantial and ineligible original creation of a support structure. This conclusion is reinforced by clear descriptions in the Statement of Work that ineligible services were to be included. Since the \$16 million figure is 59% of the full funding request, which is much larger than the 23.6% figure that comes from IBM’s corrected cost allocation figures, IBM’s methodology cannot be accepted.

Third, IBM assigns a project management expense that is one-third of the entire project, and equal to the expense for repair costs. Under appropriate project management techniques and reasonable standards for good business practices, it is not reasonable to assign a project management expense for maintenance services that is equal to the costs of the actual repairs. Furthermore, IBM has provided no specific information that would support their assumption of one third of the full cost being attributable to project management.

For these reasons, USAC rejects IBM’s cost allocation because the information available does not support equal weighting of project management, repair costs, and technical support office initial setup.⁵¹

In making this determination, USAC emphasizes that IBM has failed to provide specific information about the personnel involved for various parts of the project, the non-personnel costs, or other information that would substantiate the amount of actual support service costs in comparison to the ineligible costs expended in order to reach a capability for providing those support services. IBM has provided eligibility arguments, but has failed to provide specific information about the extent and type of services actually delivered.

When a cost allocation to subtract ineligible components is not available, USAC generally seeks recovery of the full disbursed amount. However, because IBM has provided some information, USAC will formulate a cost allocation based on the information provided.

USAC’s cost allocation first considers the limited period of time that repair services were actually utilized – 5 and a half months out of the 12 months for which funds were disbursed. This corresponds to a factor of 46% (5.5 divided by 12), that is

⁵⁰ Hearing Record, pp. 260-262, 563-564.

⁵¹ Because USAC finds that this equally-weighted approach cannot be accepted, USAC does not reach an analysis of IBM’s breakdown of initial setup expenses as 53% eligible and 47% ineligible, but notes that such an analysis, if conducted, might reach different results than that indicated by IBM.

applicable for the time period eligible services were provided. Additionally, the record establishes that ineligible support services – such as ineligible end user support and ineligible network monitoring and management – were provided. However, neither IBM nor El Paso ISD provided specific details to establish the proportion of these ineligible services to any eligible services.

USAC has evaluated the January 18, 2001 contract for maintenance services to provide a basis for a cost allocation for the maintenance services provided. Absent specific information provided by IBM, and because no contrary information has been provided by IBM, USAC will use a basic cost allocation approach that identifies the total number of tasks, and classifies the tasks that are not eligible or only partially eligible.

The documentation provided to USAC consists of an Executive Overview, a Statement of Work (labeled Section 2), and appendices, with the descriptions of specific tasks performed in the Statement of Work section. Section 2.3 describes the activities of the Maintenance Support Office, with additional subsections as follows:

- 2.3.1 Maintenance Project Coordination
- 2.3.2 Call-in Dispatch/Technical Maintenance Support
- 2.3.3 Systems Maintenance Function Implementation

Subsection 2.3.2 provides a listing of 17 separate tasks, and provides the principal basis for a cost allocation.⁵² In addition, subsection 2.3.3 outlines certain implementation activities that also identify ineligible features.

The 17 tasks identified in subsection 2.3.2, and USAC's determination of ineligible activities, is provided in the table below. USAC's determination of partial or full ineligibility is limited to circumstances in which the determination is clear.

<u>Statement of Work Task</u>	<u>USAC Comment</u>
1. Take incoming calls from El Paso ISD users	Some calls were for ineligible end user support—partially ineligible
2. Learn/understand/support El Paso ISD hardware and operational configurations	
3. Serve as initial point of contact for support, maintenance and problem resolution	Some contacts were for ineligible end user support—partially ineligible

⁵² The opening narrative for Section 2.3 also provides a listing of the work to be performed. However, since this listing appears duplicative in many respects to the information in subsection 2.3.2 it is not separately evaluated.

4. Provide systems support for servers, switches, routers, and other network components	
5. Provide "ownership to resolution" of all network problem calls, monitor and report on the progress of problem resolution (through the monthly MSO activity report), confirm resolution of the problem with the end user, and log final resolution via the maintenance tool.	
6. Prioritize problem resolution in accordance with documentation developed by IBM and agreed to by El Paso ISD	
7. Provide system status messages as requested	
8. Provide web maintenance support	
9. Monitor problem status to facilitate problem closure	
10. Provide problem diagnosis and levels one/dispatch call-in support, level two/advanced network maintenance support, and level three/advanced network maintenance support technical support	
11. Coordinate problem resolution with escalation to appropriate skill level technical resources toward problem resolution goals	
12. Maintain documentation of problem and 'own' problem resolution for in-scope activities, defined as: <ul style="list-style-type: none"> • Netfinity servers (number to be stipulated) • RS 6000 servers (to be stipulated) • Workstation support related to the network (approximately 10,000 workstations) • Networking hardware and configuration support (Disco networking equipment located in up to 90 buildings) • Dial-up/direct connections to the Internet • Network connectivity between buildings 	Workstation support is not eligible—partially ineligible
13. Perform appropriate 'hand-off' of out-of-scope work functions (i.e. PC workstation warranty work)	No PC workstation work is eligible—not eligible
14. Report out of scope activities to project office for proactive interaction with El PasoISD resources to minimize future occurrences	Some reporting was for PC workstation work—partially ineligible
15. Assist in the resolution of in-scope functions via telephone support or on-site network related support through problem resolution	
16. Dispatch dedicatee maintenance field technical resources and track activities through network problem resolution	
17. Dispatch and manage extended field technical network resources and track activities through network problem	

resolution	
------------	--

Based on the information available, USAC has determined that four of the tasks are partially ineligible, and one task to be fully ineligible. USAC considers the remaining tasks to be eligible based on the information available at this time. Counting every determination of "partially ineligible" as a finding at the level of 50% ineligible, or 17.6% (3 divided by 17), of the tasks are not eligible.

In addition, subsection 2.3.3 describes the features implemented as part of the overall maintenance design. Additional subcategories, and USAC's evaluation of each of them, are provided in the table below.⁵³

<u>Task</u>	<u>Comment</u>
2.3.3.1 Network Maintenance Systems Design	
2.3.3.2 Detailed Implementation Design and Test Environment Installation	
2.3.3.3 Deployment of Network Maintenance Framework	
2.3.3.4 Deployment of Server and Network Monitoring	Network monitoring is fully ineligible ⁵⁴
2.3.3.5 Inventory	
2.3.3.6 Maintenance Event Consolidation & Automation	
2.3.3.7 Help Desk Problem and Change Maintenance Function	
2.3.3.8 User Administration	
2.3.3.9 Remote Control	

Using the same approach as indicated for the previous table, the ineligible network monitoring would account for 11.1% (1 divided by 9), of the work.

⁵³ Lack of USAC comment for this table and the previous table are not to be interpreted as an indication that USAC has necessarily determined that the item has been found to be eligible. In some cases, such as subsection 2.3.3.1, the network architecture design function has been found to be not eligible, but is discussed and cost allocated separately from this part of the analysis.

⁵⁴ See Schools and Libraries, Eligible Services List at 22 (January 24, 2001) available at <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>.

Adding the two areas of ineligible support services provides a finding of 28.7% ineligible (17.6% + 11.1% = 28.7%).

Total Recovery Amount for FRN 648793: USAC concludes that the disbursed amount of \$24,409,530.00 should be pro-rated for the amount of time services were delivered totaling \$11,228,383.80 ($\$24,409,530.00 \times 5.5 = \$11,228,383.80$). The ineligible support services would occur over the entire period of time because there is no indication in the record that these services were delivered at the beginning of the service delivery period and therefore require cost allocation for the amount of \$3,222,546.15 ($\$11,228,383.80 \times 28.7\% = \$3,222,546.15$). Thus, the total amount of recovery is \$16,402,072.35 ($\$24,409,530 \times 54\% + \$3,222,546.15 = \$16,402,072.35$).

Schools and Libraries Division
Universal Service Administrative Company

cc: Bob Richter
National E-rate Program Executive
IBM Corporation
166 Deer Run
Burlington, CT 06013

John A. (Tony) Wening
National E-rate Program Executive
IBM Corporation
2330 Lakewood Road
Jefferson City, MO 65109

Terri Jordan
Executive Director
Business Services, Technology and Information Systems
El Paso Independent School District
6531 Boeing Drive
El Paso, TX 79925

Exhibit 2

2007 EPISD Letter to USAC



Lorenzo Garcia, Ed.D.
Superintendent

November 21, 2007

*Via Email (mblackwell@usac.org) and
Certified Mail, Return Receipt Requested*

Mr. Mel Blackwell
Universal Service Administrative Company
Schools & Libraries Division
2000 L Street, N.W., STE 200
Washington, DC 20036

RE: Form 471 Application Number 256606

Dear Mr. Blackwell:

This letter is El Paso Independent School District's response to USAC's September 25, 2007, Commitment Adjustment (COMAD) letter and Recovery of Improperly Disbursed Funds (RIDF) letter. The District has carefully reviewed USAC's decision. In the interest of bringing a close to this matter, the District accepts USAC's determination's concerning Form 471 application number 256606, and the District will not appeal USAC's decision.

District Improvements

In accepting USAC's decision, EPISD would like to point out a few of the significant changes that have occurred over the past five years. During this period, the District:

1. Replaced all the senior officials responsible for managing the District's Universal Service Funding (USF) applications.
2. Dedicated additional staff to supporting the USF process.
3. Mandated training for District staff involved in the USF process. (The District's designated E-rate coordinator consistently attends USAC and other training events.)
4. Engaged a third-party expert, Funds For Learning, LLC, to assist the District in managing USF funds and maintaining compliance with USF program rules and regulations.

5. Stopped using IBM as a service provider for USF projects.
6. Ceased relying on service providers of USF-eligible goods and services for compliance support.
7. Ensured greater involvement of District's legal counsel throughout the USF process.

These changes have had a dramatic impact on EPISD's E-rate program. These changes are apparent in several objective ways:

- A. Over the past five years, the District has displayed a more moderate appetite for E-rate funding. In FY2001 and FY2002, the District requested a total of \$166,291,618 in E-rate discounts, or an average of \$83.1 million per year. In the five-year period since then, the District has requested a total of \$30,827,877, or an average of \$6.2 million per year. In other words, **the District is requesting \$77 million dollars less per year than it was during FY2001 and FY2002.**
- B. In 2004, the District received a Selective Review that included an exhaustive examination of the District's technology plan, procurement documents, budget, and other related items. **The District passed the Selective Review and was awarded funding.**
- C. In 2006, the District was selected for a BearingPoint site visit that included a review of the District's bidding procedures and document retention procedures, as well as interviews with the District's key E-rate staff. **The District met all USAC requirements, and to the best of the District's knowledge, the site visit resulted in no findings.**

Accepting USAC's Decision

The COMAD letter indicates that both IBM and the District share responsibility for the recovery of \$843,575.00. Therefore, the District will remit to USAC funds totaling \$421,787.50, or 50 percent of the funds to be recovered.

At its meeting on November 13, 2007, the District's Board of Trustees approved payment of these funds to USAC and decided not to appeal the USAC decision. The District will be able to transfer these funds to USAC after a required budget amendment is finalized at the Board's November 27, 2007, meeting. The District intends to transfer these funds to USAC no later than December 14, 2007, but hopefully sooner than that. As a logistical matter, please advise the District as to whom the check should be issued and to whose attention the check should be sent. At that point, the USF document retention period associated with these funds will have passed, and the District will have complied fully with USAC's decision. Therefore, upon payment of these funds to USAC, the District plans to close its files on Form 471 application number 256606.

Mr. Mel Blackwell
Page 3
November 21, 2007

If there is anything else that the District must do related to this matter, please notify us know as soon as possible.

Moving Forward

The District is currently preparing its FY2008 applications for Universal Service Funding. The District welcomes any questions USAC may have concerning its current management of USF funds. USAC is also invited to visit El Paso to see first-hand the systems and procedures that have been put in place within the District to properly comply with USF guidelines.

The District greatly appreciates the USF funding it has previously received, and such funding has proven extremely beneficial to the education of its students. As a poor school district, EPISD would not have been able to achieve as much in these areas without the USF funds. The District recognizes the unintended role it had in some of the serious issues coming to light in FY2002 and wishes to once again point out the unimpeded support and access it provided to USAC, SLD, Congressional, and other investigators on those matters.

Thank you for the hard work USAC has done to bring closure to this situation. If there is anything I can do to assist USAC related to the District's USF applications, please feel free to contact me personally.

Sincerely,

Lorenzo Garcia
by Edward Haldon, Chief of Staff
(with permission)
Lorenzo Garcia, Ed.D.

Exhibit 3

2007 EPISD Payment to USAC



Kenneth D. Parker, CPA, RTSBA
Chief Business Officer

December 6, 2007

Mr. Mel Blackwell
Universal Service Administrative Company
Schools and Libraries Division
2000 L. Street, N. W., STE200
Washington, DC 20036

Dear Mr. Blackwell:

As a follow-up to the letter of November 21, 2007 of Dr. Lorenzo Garcia, Superintendent of the El Paso Independent School District, enclosed please find an original check from the District, made payable to the Universal Service Administrative Company, Schools & Libraries Division, in the amount of \$421,787.50. It is being tendered to you in accordance with the terms and conditions of that prior letter. The earlier letter had requested information on how and where to send the payment, but no response was received; in order to not delay the payment any further, the District decided to make the payment in this manner.

Please contact me immediately if there is any question, comment, or objection to this payment. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth D. Parker".

Kenneth D. Parker
Chief Business Officer

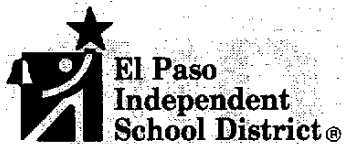


UNIVERSAL SERVICE ADMIN CO

VENDOR NUMBER: 29093
CHECK NUMBER: 708995
CHECK DATE: 12/06/07
CHECK AMOUNT: \$421,787.50

INVOICE NUMBER	P/O#	AMOUNT	DISCOUNT	PAID
08-000712		421,787.50		421,787.50

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND - NOT A WHITE BACKGROUND



JPMorgan Chase Bank, N.A.
Texas Controlled Disbursements
For Inquiries call: 800-457-7191

88-88
1113

DATE
12/06/07

ACCOUNTS PAYABLE
CHECK NUMBER
708995

PAY EXACTLY 421,787 DOLLARS AND 50 CENTS

CHECK AMOUNT
\$421,787.50

TO
THE
ORDER
OF
UNIVERSAL SERVICE ADMIN CO
SCHOOLS AND LIBRARIES DIVISION
200 L STREET N W SUITE 200
WASHINGTON, DC 20036

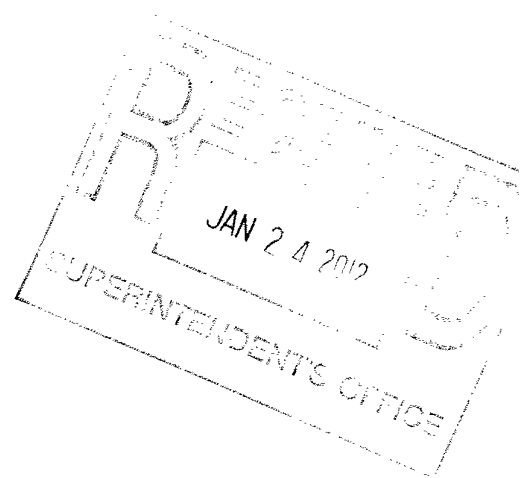
Louise Hines

⑈0708995⑈ ⑆111300880⑆ ⑈06300041822⑈

Exhibit 4

2012 Decision on IBM Appeal

Terri Jordan
El Paso Indep. School District
6531 Boeing Dr.
El Paso, TX 79925



TIS
JAN 26 REC'D
Received

Received
JAN 26 REC'D
TIS

Cynthia B. Schultz
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

Billed Entity Number: 142118
Form 471 Application Number: 256606
Form 486 Application Number: 156979

Administrator's Decision on Appeal - Funding Year 2001-2002

January 19, 2012

Cynthia B. Schultz
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

Re: Applicant Name: El Paso Indep. School District
 Billed Entity Number: 142118
 Form 471 Application Number: 256606
 Funding Request Number(s): 648646, 648729, 648758, 648793, 648960
 Your Correspondence Dated: November 21, 2007

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's FY 2001 Notification of Commitment Adjustment and Notification of Improperly Disbursed Funds Letters for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 648729, 648758, 648793, 648960
Decision on Appeal: Denied
Explanation:

In Funding Year 2001, El Paso Independent School District (El Paso ISD) submitted FCC Form 471 #256606 to the Schools and Libraries Division (SLD) of USAC seeking funding for eight internal connections Funding Request Numbers (FRNs) and one Internet access FRN. IBM Corporation is the service provider associated with each of these FRNs. USAC funded these requests and eventually disbursed \$55.3 million to IBM for providing the products and services to El Paso ISD.

USAC later learned that the FRNs may not have been in compliance with FCC rules governing SLD. On September 16, 2004, USAC requested that IBM respond to questions concerning eligibility for the services and entities funded. USAC later contacted El Paso ISD for information related to certain FRNs for which El Paso ISD could provide relevant information.

After thorough review of the documentation, USAC determined that ineligible products and services were provided for certain FRNs and sought to adjust the commitment amount. USAC also determined that funds were improperly disbursed for one FRN, and that recovery should be sought from both IBM and El Paso ISD. On November 21, 2007, IBM submitted an appeal of the Notification of Commitment Adjustment and Notification of Improperly Disbursed Funds Letters in relation to the following FRNs: 648646, 648758, 648793, 648960, and 648729.

As part of the appeal, you make several arguments. The arguments are reiterated below with (A) identifying each appellant argument. The USAC response to each appellant argument is listed directly beneath each argument, with (U) identifying the USAC response.

A1) THE ISSUANCE OF THE COMAD IS NOT TIMELY UNDER COMMISSION REGULATIONS AND, THEREFORE, IS UNENFORCEABLE.

U1) USAC was within the time frame to proceed with recovery actions. The FCC established a five-year administrative time period for completing investigations and audits in the *Schools & Libraries Fifth Report and Order*.¹ The FCC stated

[W]e will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five year period after final delivery of service for a specific funding year . . . Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or rule within five years of the final delivery date of service for a specific funding year. In the E-Rate context, disbursements often occur for a period up to two years beyond the funding year . . . For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order. We believe that conducting inquiries within five years strikes an appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud, and abuse and the beneficiaries' need for certainty and closure in their E-Rate application process. *Id.* at ¶¶ 32-33.

The Commission further explained that this administrative five-year period was not the same as the five-year time frame established pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), in that this time frame was the "time period within which we must bring action to establish a debt due to violations of the E-Rate program rules or statutory provisions. In contrast, the DCIA statute limitations relates to the time period within which we must act to collect the debt once established." *Id.* at ¶ 32 n.55.

¹ *In the Matter of Schools and Libraries Universal Support Mechanism*, Fifth Report and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15819, at ¶32 (2004) ("*Fifth Report & Order*").

In the present matter, USAC determined that IBM and El Paso violated program rules for Funding Year 2001. According to USAC records, the last date for service on the cited FRNs is September 30, 2002. USAC commenced the investigation of this matter in 2004 and issued funding recovery letters on September 25, 2007 which is before the deadline to COMAD of September 30, 2007, USAC complied with the requirements of the *Fifth Report and Order* and will not rescind its COMAD/RIDF action on this basis.

A2) USAC PROPERLY APPROVED THE SERVICES PROVIDED IN THE FRNS AT ISSUE AND IBM'S AND EPISD'S RELIANCE ON USAC'S ELIGIBILITY APPROVAL WAS PROPER

U2) USAC originally approved the equipment and service request for these FRNs based on the documentation that was provided to support the application at the time of its initial review. After funding was issued, it came to USAC's attention that the support documentation did not accurately detail the equipment and services that were actually delivered. After allowing both IBM and El Paso ISD to respond and submit additional information to USAC's investigation into this matter, it was determined that a recovery of funding was necessary for erroneously disbursed funding.

A3) USAC IS NOT LEGALLY AUTHORIZED TO ISSUE A COMAD BASED ON PROCEDURAL VIOLATIONS OCCURRING IN FY2001 THAT DO NOT AMOUNT TO VIOLATIONS OF A FEDERAL STATUTE

U3) The COMAD Order states, "Specifically, we direct USAC to adjust such commitments by: (1) cancelling all or any part of a commitment to fund discounts for ineligible services or the provision of telecommunications services by non-telecommunications carriers and (2) denying payment of any requests by providers for compensation for discounts provided on such services."²

A4) USAC IMPROPERLY APPLIED THE FOURTH REPORT AND ORDER BY ISSUING THE COMADS TO IBM

U4) USAC improperly disbursed funding for services that were not provided or equipment that was not installed as approved on the applicant's FY 2001 FCC Form 471. FCC rules authorize USAC to disburse funds to service providers for providing supported services to eligible entities³. These rules are violated if the service provider receives payment for services and/or products that were not delivered to the eligible entity. In the Fifth Report and Order, the Commission stated that it would not be appropriate "for a beneficiary to retain an overpayment if, for some reason, USAC has mistakenly disbursed an amount in excess of that which the entity is allowed under our rules"⁴. The FCC further states that "the service provider is likely to be the entity that fails to deliver supported services within the relevant funding year, fails to properly

² See FCC 99-291 para 1.

³ 47 C.F.R. secs. 54.501(a), 54.517.

⁴ See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15817-18, FCC 04-190 para. 29 (rel. Aug. 13, 2004).

bill for supported services” and therefore, the service provider should be a party to whom recovery should be directed⁵. USAC provided the opportunity for both IBM and El Paso ISD to support claims of eligibility and/or to provide a cost allocation for ineligibles. USAC’s letter dated September 25, 2007,⁶ explains USAC’s final eligibility determination for each FRN in greater detail.

A5) THE COMAD REGARDING “MAINTENANCE” (FRN 648793) WAS ISSUED IN ERROR BY DEEMING THE SERVICES PROVIDED AS INELIGIBLE. THE COMAD’S RELIANCE ON GUIDANCE IN THE THIRD ORDER’S QUALIFICATIONS IS EXPRESSLY PROSPECTIVE

U5) As detailed in USAC’s September 27, 2007⁷ letter of further explanation, USAC determined, consistent with the *Universal Service Order*⁸, that this FRN included substantial ineligible items. The details related to this FRN indicate that in order to provide the services, IBM created an extensive facility for maintenance support. For example, information submitted to the House Oversight Committee indicates that up to \$16 million of the funding request was used for developing the infrastructure and tools as opposed to the delivery of actual, eligible support services.⁹ The ineligible items are those which were used to create the facility and which are not eligible in themselves.

While basic maintenance services of eligible components are eligible, the creation of an extensive support structure for the delivery of those services is not eligible. Services well beyond a basic level were provided, as evidenced of cost per site in excess of half a million dollars. USAC has provided ample opportunity for IBM and El Paso ISD to submit specific information in support of their position that only eligible services were provided. However, neither IBM nor El Paso ISD have provided documentation – such as records of the actual services provided – to support their arguments that only eligible services were provided. Additionally, although USAC disbursed the full amount committed for this FRN, IBM states that services were provided for only five and a half

⁵ See Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, FCC 04-181 para. 15 (rel. Jul. 30, 2004).

⁶ Letter Re: *Further Explanation of Commitment Adjustment Letters and Recovery of Improperly Disbursed Funds Letter to El Paso Independent School District and IBM Corporation Funding Year 2001 FCC Form 471 #256606* from Schools and Libraries Division, USAC, to Ms. Christine Hill, IBM and Mr. Jack S. Johnston, El Paso ISD, September 25, 2007.

⁷ *Id.* at 14-22.

⁸ See 47 C.F.R. §§ 54.504, 54.511; In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, (rel. May 8, 1997) (*Universal Service Order*)

⁹ Problems with the E-rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of our Nation’s Schools to the Internet Part 3: Hearing before the Subcomm. On Oversight and Investigations of the House Comm. On Energy and Commerce, 108th Cong., pp. 260-262, 563-564 (2004) (*Hearing Record*).

months¹⁰. Therefore, a portion of the cost for these products and services were billed, but could not have been delivered. USAC has determined that IBM's cost allocation was not acceptable. Therefore, instead of rescinding the entire amount, USAC applied an appropriate cost allocation¹¹. Since IBM billed for services and products that were not delivered and/or ineligible, IBM is the party that committed the violation and therefore, USAC is correctly seeking recovery from IBM.

A6) WEB & FILE SERVERS COMAD (FRN 648960) BASED ON FLAWED COST ALLOCATION

U6) USAC has determined that this request contained ineligible products: storage of end user files. El Paso ISD submitted a cost allocation for the FRN recognizing that the file store was "subject to dispute"¹². Upon reviewing the cost allocation, USAC determined that it did not meet the standard of being based on "tangible information that provides a realistic result"¹³ and therefore, applied a cost allocation approach that is typically used for cost allocation as applicable to file servers.

A7) COMAD IS INCONSISTENT WITH PRIOR FCC GUIDANCE AND SLD RULES REGARDING COST ALLOCATION (FRN 648960)

U7) USAC does not prohibit cost allocation methods that adhere to the standard of being based on "tangible information that provides a realistic result." The proposed cost allocation method by El Paso ISD did not achieve the aforementioned standard. Consistent with generally accepted cost allocation methods, USAC utilized a "straight line" cost allocation method. The USAC website illustrates how this method of cost allocation may be applied to servers.¹⁴

A8) SLD ERRED IN NOT ISSUING THE COMAD DIRECTLY TO EPISD FOR FRN 648960

U8) USAC is correct in seeking recovery of improperly disbursed funds from the service provider, IBM Corporation, and the applicant. IBM was responsible for configuring the servers to allow for the storage, IBM is partially responsible for the violation and therefore, USAC is correctly seeking recovery from IBM and the applicant.

A9) USAC EXCEEDED ITS AUTHORITY IN CONDUCTING A COST EFFECTIVENESS REVIEW OF A 6 YEAR OLD TRANSACTION (FRN 648729)

¹⁰ Letter from Bob Richter and Tony Wening, National E-rate Program Executives, IBM Corporation, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, Re Maintenance FRN, August 17, 2006.

¹¹ See <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx> for cost allocation guidelines.

¹² Letter from Louis Mona, Interim Executive Director, Technology and Information Systems, El Paso ISD, to Mel Blackwell, Vice President, Schools and Libraries Division, USAC, August 19, 2006 at 3 (*El Paso 2006 Letter*).

¹³ <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx>

¹⁴ See <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx>. See Example 3.

U9) USAC is correct for seeking recovery of funds relevant to service delivery. IBM has not provided any legal or factual support that discounts USAC's authority to perform reviews on post-commitment applications of any age. USAC is obligated to ensure that services and products requested be installed at eligible entities. USAC does not contest whether the services were installed at eligible entities. However, the original FRN pricing was based on 90 locations in the Item 21 but the installation was only for 53 locations. IBM reduced the material cost by \$641,762, but did not reduce the installation costs. USAC does find that a decrease in the number of sites and equipment warrants a proportionate decrease in labor. IBM states in their letter of appeal that the, "IBM bid is a fixed price for Video products and services. As such, IBM bore the risk of absorbing any cost overruns."¹⁵ The risk of IBM absorbing any cost overruns would constitute in a violation of the free services advisory. The provision of free services must be accounted for in the competitive bidding process. USAC finds the argument of absorbing cost overruns is without merit. USAC approved the request based on the statement of work citing 90 sites and finds that a proportionate decrease in labor is justified.

Funding Request Number(s): 648646
Decision on Appeal: Partially Approved
Explanation:

**SLD ERRED BY DEEMING CERTAIN E-MAIL SERVICES PROVIDED PURSUANT TO
FRN 648646 INELIGIBLE FOR REIMBURSEMENT**

USAC agrees with the rationale provided by IBM regarding Items 1-3 in USAC's letter dated September 25, 2007. USAC sought to recover funds for tasks identified as those necessary in order to conduct a proper competitive bidding process. The determination of the size of the server and hard drives that should be purchased is an ineligible pre-planning task. Based on your response, however, "Specify email server sizing and configuration" was for configuring the servers and partitioning the hard drives for the school and, as such, is considered a part of installation activity. The task performed by IBM is necessary to the successful installation of an e-mail server. Planning, assessment, and development of architecture are often tasks performed prior to the filing of the FCC Form 471. The unique nature of El Paso's e-mail systems being replaced necessitated "Perform planning and assessment for e-mail deployment" and "Develop distributed e-mail architecture" that would not be able to be performed until there was full access to the pre-existing system which would be accomplished after a contract was signed and after the filing of the FCC Form 471. As a result, USAC grants the portion of the appeal for Items 1-3. However, the appeal is partially approved since funding is still partially rescinded to remove the ineligible firewall software with installation and configuration (\$2,963.81 post-discount) and the costs associated with ineligible provision and installation of three Domino applications (\$59,276.22 post-discount). The denials of your other arguments were explained in the above sections.

¹⁵ Letter Re: *Appeal of Notification of Commitment Adjustment Letter for Funding Year 2001 ("COMAD") to El Paso Independent School District and IBM Corporation dated September 25, 2007* from Ms. Cynthia Shultz, IBM to Schools and Libraries Division, USAC, November 21, 2007.

Since the Administrator's Decision on Appeal modifies the commitment adjustment for your application, USAC will issue a Revised Funding Commitment Decision Letter (RFCDL) to you and to each service provider that provides the services approved for discounts in this letter. USAC will issue the RFCDL to you as soon as possible. The RFCDL will inform you of the precise dollar value of your approved funding request(s). As you await the RFCDL, you may share this Administrator's Decision on Appeal with the relevant service provider(s).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Terri Jordan
El Paso Indep. School District
6531 Boeing Dr.
El Paso, TX 79925

Exhibit 5

EPISD Demand Payment Letter

Fred Alvarez
EL PASO INDEP SCHOOL DISTRICT
6531 Boeing Dr.
El Paso, TX 79925 1068



Universal Service Administrative Company

Schools & Libraries Division

Demand Payment Letter

(Funding Year 2001: July 1, 2001 - June 30, 2002)

January 26, 2012

Jack S. Johnston

EL PASO INDEP SCHOOL DISTRICT

120 N. Stanton

El Paso, TX 79901

Re: Form 471 Application Number:	256606
Funding Year:	2001
Applicant's Form Identifier:	Yr4 - IBM (90)
Billed Entity Number:	142118
FCC Registration Number:	0006985857
SPIN:	143005607
Service Provider Name:	International Business Machines Corporation
Service Provider Contact Person:	Christine Hill
Payment Due By:	2/25/2012

You were previously sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is attached to this letter.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with your service provider to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Applicant" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Bank of America
c/o Universal Service Administrative Company (105056)
1075 Loop Road
Atlanta, GA 30337
Phone 404-209-6377

If you are located in the Atlanta area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
P.O. Box 105056
Atlanta, GA 30348-5056
Phone 404-209-6377

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete Program information is posted to the SLD section of the USAC website at www.usac.org/sl/. You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: Christine Hill
International Business Machines Corporation

Funding Commitment Adjustment Report
Form 471 Application Number: 256606

Funding Request Number: 648960
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143005607
Service Provider Name: International Business Machines Corporation
Contract Number: RFP# 101-00
Billing Account Number:
Site Identifier: 142118
Original Funding Commitment: \$5,850,540.00
Commitment Adjustment Amount: \$3,319,815.00
Adjusted Funding Commitment: \$2,530,725.00
Funds Disbursed to Date: \$2,952,513.13
Funds to be Recovered from Applicant: \$421,787.50
Funding Commitment Adjustment Explanation:

After a thorough review, it was determined that this funding request will be rescinded in full and the USAC will see recovery of erroneously disbursed funds from the applicant and the service provider as per the attached Further Explanation Letter.

Exhibit 6

IBM Earnings Report



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ABOUT HOW YOU DO BUSINESS



IBM earnings top forecasts

7 comments

By James O'Toole @CNNMoneyTech January 19, 2012: 6:28 PM ET

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IBM shares



Click the chart to track IBM shares.

NEW YORK (CNNMoney) -- IBM began the Ginni Rometty era on a positive note, posting fourth-quarter earnings Thursday that beat estimates.

The tech giant reported a profit of \$5.5 billion, an increase of 4% versus last year. Revenue for the quarter was \$29.5 billion, just short of the consensus forecast of \$29.7 billion from analysts surveyed by Thomson Reuters.

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Excluding certain charges, earnings per share came in at \$4.71, ahead of estimates of \$4.62. The company has a reputation for consistently beating Wall Street expectations.

Shares of IBM were up 2.5% in after-hours trading.

Thursday's earnings announcement is the first since Rometty, formerly the company's senior vice president

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for sales, marketing and strategy, became CEO. IBM announced in October that **Sam Palmisano would be stepping down** as CEO after nearly a decade at the helm of the firm.

Palmisano had an extremely successful tenure, transforming the company from a systems-and-services firm into a supercomputing and analytics powerhouse and presiding over revenue that more than quadrupled.

IBM's businesses include software and hardware development, along with consulting and IT services. Investors tend to view the company's earnings as indicative of overall corporate technology spending and demand.

The firm, which celebrated **its 100th anniversary** last year, has said it is aiming to hit annual earnings of at least \$20 per share by 2015. To put that in perspective, IBM earned \$13.44 a share in 2011 and is expected to earn \$14.82 a share in 2012.

Rometty said in a statement that IBM was "well on track" toward meeting the 2015 earnings goal.

Net income for 2011 was \$16.3 billion, a 9% increase from the year prior. Thursday's announcement follows **a rare misfire last quarter**, when IBM reported a 7% increase in earnings but missed forecasts on revenue.

The firm seems to have been spared from the worst headwinds of the European debt crisis in the last few months of the year, reporting a 1% increase in fourth-quarter revenues from Europe, the Middle East and Africa. Revenue in the Americas was up 3%, while Asia-Pacific sales were up 2%.

Among the company's various divisions, software revenue was up 9% for the quarter, while Global Technology Services Revenue was up 3%.

IBM (**IBM, Fortune 500**) was one of the best performers in **the Dow** last year, with shares up roughly 16% versus a year ago. That's a stark contrast to Hewlett-Packard, one of IBM's top competitors in software and services.

Shares of HP (**HPQ, Fortune 500**) are down more than 40% over the past year, and in September, the firm **fired CEO Leo Apotheker** after less than a year on the job.

IBM's earnings announcement came on a busy for tech companies. Google (**GOOG, Fortune 500**), Intel (**INTC, Fortune 500**) and Microsoft (**MSFT, Fortune 500**) also announced their quarterly results after the bell on Thursday. ■

First Published: January 19, 2012: 4:37 PM ET

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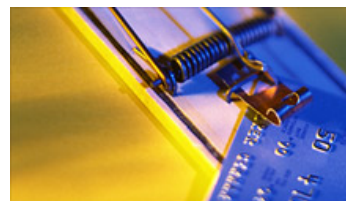
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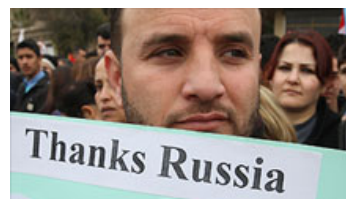
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